

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4572 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAGHUNATH GODHADPAR PRADHAN

Versus

STATE OF GUJARAT

Appearance:

MR UTPAL M PANCHAL for Petitioner

MR KC SHAH, A.G.P., for Respondents

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 09/09/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner, father of detenu Raghunath Gadhadhar Pradhan, has brought under challenge the detention order dated 5th April, 1996 rendered by the second respondent under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No. 16 of 1985), hereinafter referred to as "the PASA Act."

2. The grounds on which the impugned order of detention has been passed appear at Annexure : C to the petition. They inter alia indicate that the detenu has been carrying on criminal and anti-social activities of threatening innocent people, extorting money from them and beating them and causing hurt to them with deadly weapon/s and creating atmosphere of fear. The following offences have been registered against the detenu in Pandesara (District : Surat) Police Station :

1. CR 151/95 U/ss. 323, 324, 504 and 114 I.P.C. r/w Section 135 of the Bombay Police Act. Pending trial.
2. CR 17/96 U/ss. 143, 147, 148, 149, 342, 302, 34, 114 of I.P.C. r/w Section 135 of the Bombay Police Act. Pending trial.

It is not in dispute that the detenu has been on bail in respect of both the aforesaid CRs and that he is around 19 years of age.

3. It has been recited that the detenu's anti-social activity tends to obstruct the maintenance of public order and in support of the said conclusion statements of witnesses have been relied upon. They indicate about the incidents enumerated in the ground of detention. All the incidents are stated to have occurred during the month of December, 1995, January, 1996 and February, 1996. They indicate threatening administered to the concerned witnesses, their beating in the public place, as the case may be, and rushing to the people with deadly weapons collected on such occasions, resulting in their running away from the place.

4. It is on the aforesaid incidents that the Detaining Authority has passed the impugned order of detention while also relying upon the aforesaid cases lodged against the petitioner. The detenu has been stamped as a dangerous person within the meaning of Section 2(c) of the PASA Act.

5. I have heard the learned Advocate for the petitioner and the learned A.G.P. for the State. The petitioner has challenged the order of detention on number of grounds, inter alia on the ground that the detenu has not been supplied the translation of the documents and statemens, as also the order of detention

and the grounds in support thereof, inspite of the fact that representation dated 21.6.1996 was made, inter alia stating therein that the detenu did not know Gujarati language and that he knew only Oria language. No Affidavit in Reply has been filed and it is an admitted fact that no translation has been supplied. In the facts of the case, therefore, the decision of this Court in the case of Bhavansinh @ Bhagu Loreshinh Rajput V/s. Commissioner of Police, Ahmedabad & ors., decided on 6.7.1993 in Special Criminal Application No. 1438 of 1992, reported in 1993 (2) G.L.H. (U.J.) 22, would be applicable. There also there was nothing on record to show that the detenu was conversant with the Gujarati language. It was, therefore, held that the detenu was deprived of the opportunity to make effective representation. It was, therefore, held there that continued detention would not stand in law.

6. In Ibrahim Ahmad Batti V/s. State of Gujarat, reported in AIR 1982 SC 1500, the Apex Court in Para : 10 and 11, has observed as under :

"All documents, statements and other materials incorporated in the grounds by reference and which have influenced the mind of the detaining authority in arriving at the requisite subjective satisfaction must be furnished to the detenu along with the grounds, or in any event not later than five days ordinarily and in the exceptional circumstances and for reasons to be recorded in writing not later than 15 days from the date of his detention and secondly, all such material must be furnished to him in a script or language which he understands and failure to do either of the two things would amount to a breach of the two duties cast on the detaining authority under Art. 22(5) of the Constitution." (Para : 10)

"Preventive detention is a serious invasion of personal liberty and the normal methods open to a person charged with commission of any offence to disprove the charge or to prove his innocence at the trial are not available to the person preventively detained and therefore in preventive detention jurisprudence whatever little safeguards the constitution and the enactment authorising such detention provide assume utmost importance and must be strictly adhered to and one of such safeguards is that unless exceptional circumstances really obtain the delay in supply

of grounds of detention as also the documents and statements incorporated therein by reference beyond the normal period of five days would be fatal." (Para :11)

In that case the reason for not supplying the translation was non-availability of sufficient translations and the same was not accepted as an exceptional circumstance justifying the delay in supply of the bulk of documents and statements to the detenu in the script or language he understood.

7. In above view of the matter the continued detention of the detenu is required to be snapped, holding it to be illegal. The same is, therefore, quashed and set aside. The detenu Raghunath Gadhadhar Pradhan shall be forthwith set at liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

* * * * *